

May 22, 1979

**79-34 MEMORANDUM OPINION FOR THE ACTING
CHIEF, ORGANIZED CRIME AND
RACKETEERING SECTION, CRIMINAL
DIVISION**

**Office of Legal Counsel—Limitation on Opinion
Function**

This confirms the advice we gave orally concerning your May 18 memorandum concerning a requested Office of Legal Counsel opinion. You state that a Federal district judge has asked for our opinion on an issue that has arisen in connection with a pending grand jury investigation. That issue is whether the Department of Justice has the authority to investigate possible violations of title 18, involving pension plans covered by the Employee Retirement Income Security Act, 29 U.S.C. § 1001 *et seq.* As I indicated orally to you previously, it would not be appropriate in this circumstance for us to render a legal opinion.

The Attorney General has delegated certain responsibilities to the Office of Legal Counsel, including the preparation of his formal opinions and advice to Government agencies. 28 CFR § 0.25. That delegation does not authorize us to provide legal advice at the request of the judicial branch. Moreover, the opinion function of the Attorney General himself is limited by statute to the provision of advice to the President, the heads of executive departments, and the Secretaries of military departments. 28 U.S.C. §§ 511-513.

In addition to those restrictions on our opinion function, we note that this Department has, as a matter of policy, consistently refrained from opining on questions presented to the courts for resolution. The Attorney General has stated, for example:

[T]his Department has uniformly refused to consider any questions that have been committed to judicial review. To do so might bring this Department into conflict with a Judicial tribunal, and this has been held to be an adequate reason for a refusal to give an official opinion. [24 Op. Att'y Gen. 59, 60 (1902).]

Similar statements appear in numerous other opinions of the Attorneys General. *See, e.g.*, 41 Op. Att’y Gen. 266, 273 (1956); 38 Op. Att’y Gen. 149, 150 (1934); 37 Op. Att’y Gen. 34, 42 (1932). Since the question you have asked us is pending before the court, we do not believe it would be appropriate for us to respond to the request.

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